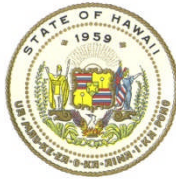


DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT
GOVERNOR



DANNY J. VASCONCELLOS
CHAIR

MELANIE S. MATSUI
MEMBER

LILY O.C. LING
ACTING MEMBER

LABOR & INDUSTRIAL RELATIONS APPEALS BOARD
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February 26, 2015

TO: The Honorable Karl Rhoads, Chair
The Honorable Joy A. San Buenaventura, Vice Chair, and
Members of the House Committee on Judiciary

DATE: Friday, February 27, 2015
TIME: 3:00 P.M.
PLACE: Conference Room 325, State Capitol

FROM: Danny J. Vasconcellos, Chair
Lily O.C. Ling, Acting Member
Labor and Industrial Relations Appeals Board

**RE: H.B. 951 Relating to Notice of Hearing by the Labor and
Industrial Relations Appeals Board (LIRAB)**

I. OVERVIEW OF PROPOSED LEGISLATION

HB951 is an Administration proposal that authorizes LIRAB the option to provide notice of hearing to a party by online posting on LIRAB's webpage if service of the notice by first class mail is returned as undeliverable and a forwarding address for the party cannot be ascertained after a reasonable and diligent effort.

LIRAB strongly supports HB951 because online posting of notice of hearing provides an effective and cost-saving option to publication of the notice by newspaper.

II. CURRENT LAW

LIRAB is subject to the Administrative Procedures Act (APA) in Chapter 91 of the Hawaii Revised Statutes (HRS). The APA requires LIRAB to provide notification of hearing to a party who has a pending appeal at LIRAB. Under section 371-4(c), HRS, the manner of providing such notice is by first class mail. If, however, the notice is returned as undeliverable or a party moves away and a forwarding address cannot be ascertained after a reasonable and diligent effort, LIRAB is required by section 371-4(d), HRS to provide notice of hearing by publication in a newspaper of general circulation.

III. COMMENTS ON THE HOUSE BILL

Notice by newspaper publication is costly and has not been an effective means of providing notice to a party. An average newspaper ad costs the LIRAB \$383.00. LIRAB spent close to \$5,000 in newspaper ads in the last four years. At least for the last twenty-five years, no party has ever appeared at LIRAB for a hearing after notice by newspaper publication.

The notice of hearing that the LIRAB seeks authority to post online is not a first notice . Online posting is a last resort option that is done only after service by mail is unsuccessful and after a reasonable and diligent inquiry to ascertain a forwarding address for a party in an ongoing workers' compensation matter . This party, at one time, was an active participant in the pending workers' compensation matter, but has since abandoned the appeal, moved away without a forwarding address, or whose address cannot be ascertained.

The option to provide notice of hearing by posting on the LIRAB's webpage is effective and economical. The LIRAB already has an online presence on the department's website (labor.hawaii.gov). Information posted online can be accessed with smart phones or computers and is more readily available than information buried in legal print ads. Public libraries provide computers and internet connection to those who do not own computers.

Online posting of information has become commonplace in today's digital world. Many State departments and boards already post notices of meetings and other events on their websites.

This proposed bill is consistent with the Administration's efforts to use technology to improve efficiency and reduce costs without sacrificing customer service.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

February 27, 2015

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

House Bill 951 - Relating to Notice of Hearing by the Labor and Industrial Relations Appeals Board

The Disability and Communication Access Board (DCAB) is a statewide Governor-appointed Board with a majority of its members being persons with disabilities or family members. The Board's mission is to advocate and promote full inclusion, independence, equal access, and quality of life for persons with disabilities in society. This testimony represents a position voted upon by the Legislative Committee of the Board.

DCAB takes no position but provides comments on House Bill 951 that allows the Labor and Industrial Relations Appeals Board the option to provide notice of hearing by online posting on the Board's webpage if service by first class mail fails to elicit a response from the party. A state agency should not assume that everyone, including people with disabilities, has access to the Internet when notices of hearings are posted. Other methods to disseminate information, including the newspaper, television postings to the community bulletin boards, etc., need to be made by the agency to ensure the widest possible audience is reached regarding upcoming hearings.

Our agency also provides technical assistance regarding compliance to the Americans with Disabilities Act (ADA) as it relates to programs and services of government and how changes will impact individuals with disabilities in the community.

Thank you for the opportunity to testify.

Respectfully submitted,

BARBARA FISCHLOWITZ-LEONG
Chairperson
Legislative Committee

FRANCINE WAI
Executive Director



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 27, 2015

To: The Honorable Karl Rhoads, Chair,
The Honorable Joy A. San Buenaventura, Vice Chair, and
Members of the House Committee on Judiciary

Date: February 27, 2015

Time: 3:00 p.m.

Place: Conference Room 325, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 951 Relating to Notice of Hearing by the Labor and
Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

To allow the Labor and Industrial Relations Appeals Board (LIRAB) the option to provide notice of hearing by online posting on the LIRAB's webpage if service by first class mail is undeliverable.

The department strongly supports this Administration proposal, which is consistent with the Administration's efforts to make government more efficient without sacrificing levels of service.

II. CURRENT LAW

The LIRAB is currently subject to chapter 91, which requires the Board to provide notice of hearing by publication in a newspaper of general circulation if service by first class mail cannot be made.

III. COMMENTS ON THE HOUSE BILL

One strategy to preserve services during the "Great Recession" was to severely reduce the operating budgets in the department and no restoration has occurred. The DLIR has addressed this by using Administration proposals to improve business processes and using technology to improve the delivery of DLIR's

programs and quality of services to Hawaii's people [Act 261 (SLH, 2012), Act 262 (SLH, 2012), Act 14 (SLH, 2013), Act 15 (SLH, 2013), Act 96 (SLH, 2013), Act 98 (SLH, 2013).

HB951 offers the opportunity for the LIRAB to use the operational savings to help meet the increased need to service persons with Limited English Proficiency (LEP) and take small steps towards going paperless, among other costs.

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HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

COMMITTEE ON JUDICIARY
Testimony on H.B. 951
Hearing: February 27, 2015

(RELATING TO NOTICE OF HEARING BY THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD)

Chair Rhoads, Vice Chair San Buenaventura and members of the Committee. My name is Peter Fritz. I am an attorney in private practice specializing in state tax and disability law. I am offering comments concerning this bill's potential to discriminate against individuals with disabilities by posting notices online.

H.B. 951 would authorize the Labor and Industrial Relations Appeals Board ("LIRAB") to provide notice of hearing to a party by online posting on LIRAB's webpage if service of the notice by first class mail is returned as undeliverable and a forwarding address for the party cannot be ascertained after a reasonable and diligent effort.

I have some concerns about this bill because the LIRAB's website is not fully accessible to individuals with disabilities. The site does not meet the requirements of Title II of the Americans with Disabilities Act ("ADA"), Section 508 of the Rehabilitation Act ("Section 508") or Comptroller's Memorandum 2010-28. Because the site does not meet these accessibility requirements, posting a notice on line on line could prevent an individual with a disability from accessing a notice and give rise to an argument of denial of due process.

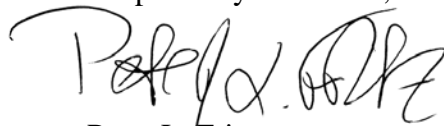
An examination of the first 5 pages of the LIRAB's site, <http://labor.hawaii.gov/lirab/> revealed accessibility issues creating problems for older users and/or people with disabilities or accessibility needs. Examples of some of the errors are:

- Missing tags. A tag must contain text or an IMG with an ALT attribute. If there is no link text or the ALT tag is blank, screen readers have nothing to read.
- Some pages have markup errors like missing end tags which means that screen readers, used by visually impaired individuals, may skip important content.
- The website uses general text like "Click Here" and has no surrounding text to make the context clear. Screen readers read text around links to help understand what the link does. If there's no surrounding text and the link text is very general there's no way to work out what the link does.
- The IMG WIDTH and HEIGHT attributes don't match the actual image size. This means the image will be scaled or distorted.

Another problem is that outdated screen reader software in State Libraries complicates access to information since the old software cannot always take advantage of the newer HTML code and information may not be accessible using computers at State Libraries.

It is respectfully submitted that online posting of notices should only occur after the LIRAB has cured the defects that raise barriers to the disabled and bring the website into compliance with disability laws.

Respectfully submitted,



A handwritten signature in black ink, appearing to read "Peter L. Fritz", with a large, stylized initial "P" and a long, sweeping underline.

Peter L. Fritz


URL: <http://labor.hawaii.gov/lirab/>

Category	Benchmark against sites		
Overall Quality		5 pages with quality issues	✗ worse than average
Errors		1 pages with broken links or other errors	✗ worse than average
Accessibility		5 pages with accessibility problems	✗ worse than average
Compatibility		0 pages with browser specific issues	✓ better than average
Privacy		1 pages with privacy issues	✓ better than average
Search		5 pages with search engine issues	✗ worse than average
Standards		5 pages have W3C standards issues	✗ worse than average
Usability		5 pages with usability issues	✗ worse than average
Totals		10 pages and files checked <i>The evaluation version is limited to checking 10 pages and images.</i>	

Accessibility issues, indicating problems for older users, people with disabilities or accessibility needs.

WCAG2	Section	Key
A	508	 Priority A - accessibility users will find it impossible to use some pages
AA		 Priority AA - accessibility users will find it difficult to use some pages
Priority URL / Description		Guideline

Priority 1 Issues (Level A)

-  Each A tag must contain text or an IMG with an ALT attribute.

Add text to the link, or ALT text if the link contains an image. If there is no link text or the ALT tag is blank, screen readers have nothing to read, so read out the URL instead.


[WCAG 2.0 A F89](#)

<http://labor.hawaii.gov/>

<http://labor.hawaii.gov/dcd/>

<http://labor.hawaii.gov/lirab/>

[362](#)
[368](#)
[374](#)
[328](#)
[334](#)
[340](#)
[326](#)
[332](#)
[338](#)
[398](#)

-  This site uses general text like "Click Here" and has no surrounding text to make the context clear.

Screen readers read text around links to help understand what the link does. If there's no surrounding text and the link text is very general there's no way to work out what the link does.

[WCAG 2.0 A F63](#)

Additional link text added with the TITLE attribute doesn't work in:

- NVDA 2014.1 with IE11 (the link title isn't read when tabbing)
- JAWS 14 with IE11 or Firefox 29 (the link title isn't read when tabbing)
- WindowEyes 8.4 with IE11 (the link title isn't read when tabbing)

Link text: "Read More"

[364](#)

<http://labor.hawaii.gov/> [370](#)
[376](#)

Link text: "Read More" [330](#)
[336](#)
[342](#)
<http://labor.hawaii.gov/dcd/>

Link text: "Read More" [328](#)
[334](#)
[340](#)
<http://labor.hawaii.gov/lirab/>

- This page has links to a PDF file, but does not provide a link to download Acrobat Reader. [Section 508](#)
[1194.22](#)
[\(m\)](#)

There should include a link to download Acrobat Reader. When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with 1194.21(a) through (l).

<http://labor.hawaii.gov/> [339](#)
<http://labor.hawaii.gov/dcd/> [311](#)
<http://labor.hawaii.gov/hlrh/> [315](#)
[316](#)

- This page has markup errors, causing screen readers to miss content. [WCAG](#)
[2.0 A](#)
[F70](#)

Fix the errors listed on the Standards tab of this report. Markup errors like missing end tags mean screen readers may skip important content.

<http://labor.hawaii.gov/> [324](#) [403](#)
[406](#)
<http://labor.hawaii.gov/dcd/> [369](#) [372](#)
<http://labor.hawaii.gov/hcrc/> [364](#) [367](#)
<http://labor.hawaii.gov/lirab/> [360](#) [363](#)

General usability issues, indicating navigation problems for all users.

- ⊗ Usability.gov Guidelines - Some pages violate these guidelines.
- ⊗ W3C Best Practices - Some pages violate these guidelines.
- ✓ Readability - No issues found.

Priority	URL / Description	Guideline
Line		

Priority 1 Issues

- Users should be able to quickly look at each link and tell where it goes. [Usability.gov 10:1](#)

Priority 2 Issues

- ◐ Omitting IMG WIDTH or HEIGHT attributes means page text jumps about as images load. [Usability.gov 14:3](#)
- ◐ The IMG WIDTH and HEIGHT attributes don't match the actual image size. This means the image will be scaled or distorted. [W3C](#)

Priority 3 Issues

- ◐ Use bold text sparingly - for one or two words or a short phrase. [Usability.gov 11:5](#)
- ◐ Use link text between 3 and 80 characters so it's long enough to be understood, but avoids line wrapping. [Usability.gov 10:11](#)

Priority 5 Issues

- Capitalize the first letter of the first word in lists. [Usability.gov 12:9](#)